

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 17-1368V

Filed: September 19, 2018

UNPUBLISHED

MECHELLE HEAD,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);  
Ruling on Entitlement; Concession;  
Causation-In-Fact; Influenza (Flu)  
Vaccine; Shoulder Injury Related to  
Vaccine Administration (SIRVA);  
Bursitis

*Maximillian J. Muller, Muller Brazil, LLP, Dresher, PA, for petitioner.*

*Ryan Daniel Pyles, U.S. Department of Justice, Washington, DC, for respondent.*

### **RULING ON ENTITLEMENT**<sup>1</sup>

**Dorsey**, Chief Special Master:

On September 28, 2017, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffers a Shoulder Injury Related to Vaccine Administration (“SIRVA”) as a result of her October 11, 2016 influenza (“flu”) vaccination. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

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<sup>1</sup> Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

On September 14, 2018, respondent filed his Rule 4(c) report in which he concedes that petitioner is entitled to compensation in this case for “petitioner’s right-side bursitis and related sequelae.” Respondent’s Rule 4(c) Report at 1.

Specifically, respondent indicates that

[m]edical personnel at the Division of Injury Compensation Programs (DICP) have reviewed the petition and medical records filed in this case. Based on that review, DICP has concluded that petitioner’s right shoulder injury is not consistent with the Qualifications and Aids to Interpretation for SIRVA, as defined by the Vaccine Injury Table. 42 C.F.R. §100.3(a)(XIV)(B), (c)(10). The third criterion under the Table for sustaining a SIRVA claim is that “[p]ain and reduced range of motion are limited to the shoulder in which the intramuscular vaccine was administered.” *Id.* at § 100.3 (c)(10)(iii). Here, the record reflects symptomatology not limited to petitioner’s shoulder. Ex. 2 at 11 (Oct. 31, 2016 notation of “weakness; radiation down arm”); Ex. 5 at 1 (Nov. 17, 2016 report of an “electrical shock sensation in [petitioner’s] right hand”).

*Id.* at 4-5. Respondent further indicates that

Notwithstanding the above, the Institute of Medicine (IOM) has determined that the “evidence convincingly supports a causal relationship between the injection of a vaccine and deltoid bursitis.” INSTITUTE OF MEDICINE, ADVERSE EFFECTS OF VACCINES: EVIDENCE AND CAUSALITY 620 (Kathleen R. Stratton et al., eds., 2012). In the current case, petitioner’s orthopedist diagnosed her with “[r]ight shoulder reactive bursitis, status post flu shot.” Ex. 4 at 5. Accordingly, based on the evidence assessed by the IOM, as applied to this case, respondent concedes that petitioner has established a causation-in-fact case that her October 11, 2016 flu vaccination caused her to develop bursitis and related sequelae. Therefore, based on the record as it now stands, petitioner has satisfied all legal prerequisites for compensation under the Act. See 42 U.S.C. § 300aa-13(a)(1); 42 U.S.C. § 300aa-11(c)(1)(D)(i).

*Id.* at 5.

**In view of respondent’s position and the evidence of record, the undersigned finds that petitioner is entitled to compensation.**

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**  
Nora Beth Dorsey  
Chief Special Master